

Durrell T. Howard (“Howard”) pled guilty in Clark Superior Court to Class B felony dealing in cocaine and was sentenced to twenty years with six years suspended to probation. He appeals his sentence, arguing that the trial court abused its discretion in finding and weighing aggravating and mitigating circumstances. We affirm.

Facts and Procedural History

On July 15, 2004, the State charged Howard with dealing in cocaine as a Class A felony. Howard agreed to plead guilty to Class B felony dealing in cocaine and the State agreed to recommend an eighteen-year sentence with five years suspended to probation. On February 10, 2005, the trial court issued a bench warrant for Howard’s failure to appear.

On August 12, 2005, in an addendum to the plea agreement filed with the trial court, the State agreed to recommend a sentence of twenty years with ten years suspended. The trial court advised the parties that it would not accept the plea agreement as written.

On January 23, 2006, Howard entered a blind plea to Class B felony dealing in cocaine. At a sentencing hearing held on March 27, 2006, the trial court observed:

[T]he Court bases its decision based upon the facts that were in the Pre-Sentence Investigation Report that there is a very heavy criminal record. That there are at least, as the State has pointed out, seven active warrants. That there are a variety of violent allegations as well as those that show that there’s tampering with evidence and wrong information given to the police. But the most serious, the serious drug offenses that show and relate to the charges in this particular count. The Court will note that originally this case was charged as Dealing in Cocaine as a Class A Felony where the penalties could have been twenty to fifty years. And for whatever reason there was a recommendation that an Amended Information be filed.

Tr. p. 25. The court then sentenced Howard to twenty years with six years suspended to probation. Howard now appeals.

Discussion and Decision

Howard argues that the trial court abused its discretion when it sentenced him to an enhanced term. He asserts that his sentence is excessive because the trial court improperly weighed certain aggravating circumstances and failed to find any mitigating circumstances. In general, sentencing determinations are within the trial court's discretion. Cotto v. State, 829 N.E.2d 520, 523 (Ind. 2005). If the trial court relies on aggravating or mitigating circumstances to enhance or reduce the presumptive¹ sentence, it must (1) identify all significant mitigating and aggravating circumstances; (2) state the specific reason why each circumstance is determined to be mitigating or aggravating; and (3) articulate the court's evaluation and balancing of the circumstances. Id. at 523-24.

Howard acknowledges that the court could consider his prior convictions as an aggravator, but argues that the trial court weighed his criminal history too heavily. Howard's pre-sentence investigation report indicates that he had amassed eight criminal convictions in a span of roughly four years. Appellant's App. pp. 49-53. Thus, we cannot conclude that Howard's criminal history is inconsequential.

Howard also contends that the trial court improperly relied on his record of arrests to enhance his sentence. Howard's pre-sentence investigation report shows that he had

¹ In 2005, in response to Blakely v. Washington, 542 U.S. 296 (2004), our General Assembly amended the sentencing statutes to provide for advisory rather than presumptive sentences. Because Howard's crime occurred prior to the enactment of those new statutes, we apply the prior version. See Creekmore v. State, 853 N.E.2d 523, 528-29 (Ind. Ct. App. 2006).

five active bench warrants and had been deemed a “fugitive” on multiple charges in Kentucky. Id. “A record of arrest, without more, does not establish the historical fact that a defendant committed a criminal offense and may not be properly considered as evidence of criminal history.” Cotto, 829 N.E.2d at 526. However, a “record of arrest, particularly a lengthy one, may reveal that a defendant has not been deterred even after having been subject to the police authority of the State.” Id. “Such information may be relevant to the trial court’s assessment of the defendant’s character in terms of the risk that he will commit another crime.” Id.

Finally, Howard contends that the trial court abused its discretion when it failed to assign any mitigating weight to his guilty plea, “less than ideal” childhood, and undue hardship to his two minor children. Br. of Appellant at 13. The significance of a guilty plea as a mitigating factor will vary from case to case. Francis v. State, 817 N.E.2d 235, 238 n. 3 (Ind. 2004). Here, in exchange for his plea of guilty, the State agreed to reduce Howard’s charge from a Class A felony, which carried the potential of a fifty year sentence. Thus, he received a substantial benefit from the plea. Under these circumstances, the trial court was not required to give significant mitigating weight to Howard’s plea of guilty and the failure to specifically state that his guilty plea was a mitigating factor amounts to harmless error. Banks v. State, 841 N.E.2d 654, 658-59 (Ind. Ct. App. 2006). As for the other alleged mitigating circumstances, Howard failed to raise these proposed mitigators at his sentencing hearing and may not advance them for the first time on appeal. See Pennington v. State, 821 N.E.2d 899, 905 (Ind. Ct. App. 2005).

Under these facts and circumstances, we cannot conclude that the trial court abused its discretion when it imposed an enhanced sentence.

Affirmed.

NAJAM, J., and MAY, J., concur.